

NO. UWY-CV20-6055406-S : SUPERIOR COURT
KRISTINE CASEY, d/b/a CASEY'S : COMPLEX LITIGATION DOCKET
IRISH PUB, and BLACK SHEEP : JUDICIAL DISTRICT OF WATERBURY
ENTERPRISE, LLC
VS. : AT WATERBURY
GOVERNOR NED LAMONT : JUNE 30, 2020

AMENDED VERIFIED COMPLAINT

The Plaintiffs hereby respectfully file this Amended Verified Complaint as a matter of right, pursuant to Practice Book § 10-59 and the scheduling order entered by the Court on June 29, 2020 (Docket Entry No. 110.00).

FIRST COUNT (TEMPORARY AND PERMANENT INJUNCTION)

1. Plaintiff Kristine Casey ("Casey") is a resident of Milford, Connecticut, doing business as Casey's Irish Pub at 2019 Bridgeport Avenue, Milford, Connecticut (the "Pub").
2. Casey is the sole member and manager of Plaintiff Black Sheep Enterprise, LLC ("Black Sheep"), a Connecticut limited liability company having its principal place of business at 2019 Bridgeport Avenue, Milford, Connecticut.
3. Casey is the permittee of the café liquor permit for the Pub, No. LCA.0007367, issued effective June 1, 2019, with an expiration date of September 30, 2020, and Black Sheep is the lessee of the premises at 2019 Bridgeport Avenue, Milford, Connecticut and the backer of the café liquor permit.
4. The Defendant, Ned Lamont, is the Governor of the State of Connecticut.
5. The Pub is a classic small neighborhood bar with a "Cheers"¹ atmosphere, where

¹ "Where Everybody Knows Your Name", Gary Portnoy and Judy Hart Angelo, © 1982.

Casey began working 15 years ago and which she has owned and operated for the last 8 years.

6. The Pub has 15 stools at the bar, and there are 2 high-top tables with seats for 2 at each one, and a pool table, with a maximum occupancy load² of 59.

a. The bar in the Pub is a "consumer bar", which is defined in C.G.S. § 30-62a as "a counter, with or without seats, at which a patron may purchase and consume, or purchase alcoholic liquor."

b. The Pub is staffed by 3 employees and offers a typical pub menu, including such fare as burgers, wings, fries, corned beef and cabbage, etc., but it does not regularly serve hot meals and it does not serve full course meals.

c. About 10 percent of the Pub's business is in food and 90 percent is in beer and other alcoholic beverages.

d. The Pub is not a tourist attraction, but a neighborhood bar frequented by a small nucleus of regular customers.

e. The Pub sits at the end of a strip of stores which includes a laundromat, a Middle Eastern restaurant and hookah lounge, a pizza place, a hair salon, a nail salon,

² "Occupancy load refers to the number of people permitted in a building at one time based on the building's floor space and function. The International Standards of Practice for Inspecting Commercial Properties (ComSOP) defines occupancy load as the number of people permitted in a building based on the means of egress. ... According to the National Fire Protection Association (NFPA), an assembly occupancy refers to 'an occupancy (1) used for a gathering of 50 or more persons for deliberation, worship, entertainment, eating, drinking, amusement, awaiting transportation, or similar uses; or (2) used as a special amusement building, regardless of occupant load.' Examples of assembly occupancies include armories, assembly halls, auditoriums, club rooms, dance halls, bars, and exhibition halls, and more." <https://ccpia.org/occupancy-load-signs/>. Last accessed June 29, 2020.

a book store, a frame shop, a Chinese restaurant, a tattoo parlor and an estate sale store, all of which share a parking lot. Current outdoor and indoor photos of the Pub taken by Casey and a scale drawing of the floor plan prepared by Casey are annexed hereto as Exhibits A, B, C and D.

f. Pursuant to C.G.S. § 30-91(a), the Pub may may sell alcoholic liquor on Monday through Thursday from 9:00 a.m. to 1:00 a.m. the following morning, on Friday and Saturday from 9:00 a.m. to 2:00 a.m. the following morning, and on Sunday from 11:00 a.m. to 2:00 a.m. the following morning.

7. On March 10, 2020, in a letter addressed to the Connecticut Secretary of the State, the Clerk of the State House of Representatives and the Clerk of the State Senate, Connecticut Governor Ned Lamont (the "Governor"), expressly acting pursuant to C.G.S. §§ 19a-131a and 28-9, declared a public health emergency and proclaimed a civil preparedness emergency throughout the state, to remain in effect through September 9, 2020 unless terminated earlier by him. The declaration and proclamation stated that the Governor was acting "[i]n response to the global pandemic of COVID 19 disease", and concluded with the statement, "Orders regarding additional measures to protect public health and safety, including suspension or modification of specific statutes, will follow as I determine to be necessary." A copy of the declaration is filed herewith and incorporated herein as Exhibit E.

8. Since March 12, 2020, and as recently as June 29, 2020, the Governor has issued 57 executive orders (Executive Order Nos. 7 - 7DDD) for the purpose of protecting public health and safety.

9. Among these, by Executive Order No. 7D issued on March 16, 2020, the Governor ordered, in part:

Effective at 8 p.m. on March 16, 2020 and through April 30, 2020, unless earlier modified, extended, or terminated by me, ... any location licensed for on-premise [sic] consumption of alcoholic liquor in the State of Connecticut ... shall only serve food or non-alcoholic beverages for off-premises consumption.

A copy of Executive Order No. 7D is filed herewith and incorporated herein as Exhibit F.

10. By Executive Order No. 7G issued on March 19, 2020, the Governor modified

Executive Order No. 7D, effective at 12:00 p.m. on March 20, 2020, as follows:

Any business with an active restaurant, café or tavern liquor permit issued by the Department of Consumer Protection shall be permitted to sell sealed containers of alcoholic liquor for pick up at such restaurant, café or tavern under the following conditions: (i) the sale shall accompany a pick-up order of food prepared on the premises; (ii) the type of alcoholic liquor sold for off-premise consumption shall be the same as what the permit type would have permitted for on-premise consumption prior to Executive Order 7D, and (iii) the hours of such sales that include alcoholic liquor as part of the take-out order shall be the same as those for a package store. Delivery of alcoholic liquor by licensees with these permit types is not permitted.

With respect to the hours for the sale of alcoholic liquor by a package store, those hours are Monday through Saturday, 8:00 a.m. to 10:00 p.m., and Sunday from 10:00 a.m. to 6:00 p.m., pursuant to C.G.S. § 30-91(d). A copy of Executive Order No. 7G is filed herewith and incorporated herein as Exhibit G.

11. By Executive Order No. 7N issued on March 26, 2020, the Governor further modified Executive Order No. 7D, in part, ordering:

Where reasonably practicable, restaurants, eating establishments, and any bars that remain open for sales of food for off-premise [sic] consumption, shall limit entrance of customers into their locations to the minimum extent necessary to pick up and/or pay for orders, use touchless

payment systems, and require remote ordering and payment, whether by telephone, computer, mobile application, or other technology.

A copy of Executive Order No. 7N is filed herewith and incorporated herein as Exhibit H.

12. By Executive Order No. 7T issued on April 2, 2020, the Governor modified

Executive Order No. 7G, in part:

to additionally permit holders of the following alcoholic liquor permits to deliver directly to consumers any sealed alcoholic liquor under the same conditions as Executive Order No. 7G permitted for pick-up and off-premise [sic] consumption sales: Restaurant, Café, Tavern, Manufacturer Permit, Manufacturer Permit for Beer, Manufacturer Permit for Farm Winery, Manufacturer Permit for Farm Brewery, Manufacturer Permit for a Brew Pub, Manufacturer Permit for Beer and Brew Pub, Manufacturer Permit for a Farm Distillery.

A copy of Executive Order No. 7T is filed herewith and incorporated herein as Exhibit I.

13. By Executive Order No. 7X issued on April 10, 2020, the Governor modified

Executive Order No. 7D, in part:

The orders to prevent transmission of COVID-19 through appropriate distancing and other safety measures listed below are extended through May 20, 2020: a. Executive Order No. 7D, Section 2, imposing limits on restaurant, bar, and private club operations.

A copy of Executive Order No. 7X is filed herewith and incorporated herein as Exhibit J.

13. By Executive Order No. 7MM issued on May 12, 2020, the Governor modified, in

part, the restrictions of Executive Order Nos. 7G and 7T to permit, under limited

circumstances, outdoor dining:

at any location where food or beverages are served or goods are sold, as applicable, subject to review and approval by the Local Enforcement Official and reasonable conditions imposed through Local Enforcement Official review, ... provided further than [sic] **nothing in this Order shall permit the sale of alcoholic beverages for on-premise [sic] consumption independent of sale of food**, or permit the operation of

outdoor bars unless expressly permitted by further executive order or by rules or guidelines issued by the Department of Community and Economic Development pursuant to an executive order.

Title 30 of the Connecticut General Statutes, including Sections 30-22(a) and 30-22a(a), and any corresponding regulations or practices such as the requirement to file a patio or extension of use permit with the Department of Consumer Protection, are modified to the extent they conflict with, or create additional requirements on, the sale of alcoholic liquor by a liquor licensee so long as such licensee is (i) in compliance with Section 2 of this order and any executive order permitting outdoor dining; (ii) any rules for outdoor dining, including social distancing requirements, issued by the Department of Economic and Community Development (DECD); and (iii) any town or municipal requirements related to outdoor dining and liquor sales, as amended by Section 2 of this order. ... **Alcoholic liquor may be served only in connection with outdoor dining, which means food prepared on premises or at a food truck adjacent to the premises. ... There shall be no consumer bars, and all alcoholic beverages shall be served tableside.**"

(Emphasis added.) A copy of Executive Order No. 7MM is filed herewith and incorporated herein as Exhibit K.

14. On June 6, 2020, DECD promulgated "Sector Rules" for Phase 2 of "Reopen Connecticut®", effective June 17, 2020, which allow restaurants, but not bars³, to reopen on a limited, restricted basis. A copy of the Phase 2 Sector Rules is filed herewith and incorporated herein as Exhibit I.

a. For purposes of the Liquor Control Act, Chapter 545 of Title 30 of the Connecticut General Statutes, " 'Restaurant' means a restaurant as defined in section 30-22." C.G.S. § 30-1(15) (as amended by P.A. 19-24, § 3, effective July 1, 2020).

³ Although Executive Order Nos. 7D, 7MM, 7X and 7ZZ use the colloquial term "bar" in the sense of a saloon, it is not a defined term in the Liquor Control Act.

b. The definition of "restaurant" set forth in C.G.S. § 30-22(f) is, " 'Restaurant' means space, in a suitable and permanent building, kept, used, maintained, advertised and held out to the public to be a place where hot meals are regularly served, but which has no sleeping accommodations for the public and which shall be provided with an adequate and sanitary kitchen and dining room and employs at all times an adequate number of employees."

c. C.G.S. § 30-22(a), in describing the activity allowed under a restaurant liquor permit, provides, in relevant part:

A restaurant permit shall allow the retail sale of alcoholic liquor to be consumed on the premises of a restaurant. A restaurant patron shall be allowed to remove one unsealed bottle of wine for off-premises consumption provided the patron has purchased such bottle of wine at such restaurant and has purchased a full course meal at such restaurant and consumed a portion of the bottle of wine with such meal on such restaurant premises. For the purposes of this section, "full course meal" means a diversified selection of food which ordinarily cannot be consumed without the use of tableware and which cannot be conveniently consumed while standing or walking.

d. For purposes of the Liquor Control Act, "cafe" is defined in C.G.S. § 30-22a(c): " '[C]afe' means space in a suitable and permanent building, kept, used, maintained, advertised and held out to the public to be a place where alcoholic liquor and food is served for sale at retail for consumption on the premises but which does not necessarily serve hot meals; it shall have no sleeping accommodations for the public and need not necessarily have a kitchen or dining room but shall have employed therein at all times an adequate number of employees."

e. C.G.S. § 30-22a(a), in describing the activity allowed under a café liquor permit, provides, in relevant part:

A cafe permit shall allow the retail sale of alcoholic liquor to be consumed on the premises of a cafe. Premises operated under a cafe permit shall regularly keep food available for sale to its customers for consumption on the premises. The availability of sandwiches, soups or other foods, whether fresh, processed, precooked or frozen, shall be deemed compliance with this requirement. The licensed premises shall at all times comply with all the regulations of the local department of health. **Nothing herein shall be construed to require that any food be sold or purchased with any liquor, nor shall any rule, regulation or standard be promulgated or enforced requiring that the sale of food be substantial or that the receipts of the business other than from the sale of liquor equal any set percentage of total receipts from sales made therein.**

(Emphasis added.)

f. C.G.S. § 30-91(a) provides that a café may sell alcoholic liquor on Monday through Thursday from 9:00 a.m. to 1:00 a.m. the following morning, on Friday and Saturday from 9:00 a.m. to 2:00 a.m. the following morning, and on Sunday from 11:00 a.m. to 1:00 a.m. the following morning.

15. By Executive Order No. 7ZZ issued on June 16, 2020, the Governor amended, in part, the restrictions of Executive Order No. 7D:

to permit indoor dining pursuant to the DECD Sector Rules for Restaurants, as amended from time to time, which Sector Rules shall be legally binding and enforceable. **The remaining provisions of Executive Order No. 7D, Section 2, which prohibit the sale of alcohol by certain permittees without the sale of food, shall remain in effect and are extended through July 20, 2020.** The provisions of Executive Order No. 7N, Section 2, establishing rules for restaurant takeout and delivery, shall remain in effect.

Further Clarification of Limits on Alcohol Sales by Restaurants, Bars and Private Clubs. Executive Orders No. 7G, Section 3, and 7T, Section 2, which addressed take-out and delivery of alcoholic beverages by certain liquor permit holders, are modified to allow holders of Hotel Liquor

permits to sell alcoholic beverages for pickup or delivery consistent with the requirements on other permit holders as set forth in prior executive orders and the DECD Sector Rules for Restaurants.

(First emphasis added; second emphasis in original.) A copy of Executive Order No. 7ZZ is filed herewith and incorporated herein as Exhibit L.

16. Right outside the door of the Pub is a sidewalk which abuts a parking lot where there are 3 or 4 striped parking spaces immediately adjoining the sidewalk. There are no bollards protecting the sidewalk or the front of the pub from the cars. (See first photo in Exhibit A annexed hereto.) As a result, although 2 or possibly 3 socially-distanced tables (i.e., tables at which the seats are situated at least 6 feet apart from the seats at the next closest table) could fit on the sidewalk in front of the pub, there would be room for a seat on only 2 ends of each table, with no room to sit on the storefront side or the parking lot side of each table.

17. The Pub is a café, not a restaurant, within the meaning of the Liquor Control Act and Executive Order Nos. 7MM and 7ZZ.

18. Even though the Pub is not a restaurant, outdoor service is, in any event, not a viable option, physically because the tables would completely block the sidewalk and there would be no protection from cars approaching to park, and fiscally because not enough customers could be served. Any extension of seating into the parking lot would be unsafe to customers, and it would be imprudent to risk both the danger and the liability of such outdoor seating.

19. Even though the Pub is not a restaurant, Casey has investigated the cost of adding a few table and chair sets, constructing Plexiglas barriers between bar stools and

tables, purchasing and equipping hand sanitation stations and single-use menus, condiments, gloves, masks and signage, and it would cost her almost \$5,000, which is money she does not have and cannot afford to spend for temporary use.

20. Preparing takeout meals and sealed alcoholic beverages for off-premises consumption is not a viable option for the Pub, as Casey knows from her experience in operating the Pub and dealing with her customer base that without the pub atmosphere, there would be insufficient interest from her clientele to justify the expense of providing such service. In addition, the Plaintiffs' insurance coverage is for liability for on-premises service of alcoholic beverages only, and the risks involved and the increased premiums for additional insurance coverage, even if such coverage could be obtained, make the sale of alcoholic beverages for off-premises consumption not viable.

21. The Pub has been shut down since 8:00 p.m. on March 16, 2020 in compliance with the Governor's Executive Order No. 7D. Black Sheep continues to pay the rent of \$3,200 per month and Casey continues to incur expenses totaling approximately \$14,000 per month, while no income is being generated to pay those expenses. In addition, as a result of having no income, Casey has been unable to keep current with numerous financial obligations related to the Pub, including a credit card, a business loan, an auto loan, sales tax, state and federal withholding tax and unemployment tax, social security and medicare taxes, the electric bill, the gas bill, and debts owed to liquor distributors.

22. Casey is hemorrhaging personal savings and borrowing from her father to try to stay afloat. She has not been able to secure any loans through the Small Business

Administration. She is fast running out of funds and the shutdown forced upon her by the Governor's executive orders will put her out of business if it continues much longer, causing the Plaintiffs irreparable harm.

23. On June 29, 2020, the Governor announced that as new COVID-19 cases have been increasing in other states, he is reconsidering whether to include bars in Phase 3 of "Reopen Connecticut®" which is being contemplated for late July 2020 and for which Sector Rules have not yet been promulgated, which would further delay the ability of the Plaintiffs to reopen the Pub under the Governor's executive orders, increasing the likelihood that the Plaintiffs will be forced out of business permanently.

24. The powers of the Governor are derived from Article IV of the Connecticut constitution, which does not include any express power to issue executive orders.⁴

25. Distinct from executive power, the legislative power of the state is vested in the state House of Representatives and the state Senate in Article III of the Connecticut constitution.

26. The powers of the Governor and the powers of the legislature are separate under Article II of the Connecticut constitution.

27. The legislature may not delegate its lawmaking power to the Governor.

28. The legislature does not have the power to create gubernatorial powers which are not conferred upon the governor by the Connecticut constitution.

⁴ With respect to this and other allegations of law, rather than fact, contained in this Verified Complaint, the Plaintiffs filed a detailed memorandum of law on June 5, 2020 (Docket Entry No. 102.00).

29. It is the legislature, not the Governor, which has the power under the Connecticut constitution to protect the public health and the public safety by enacting legislation.

30. C.G.S. § 19a-131a on which the Governor expressly relied to issue his executive orders does not authorize him to issue the executive orders in issue in this case.

31. C.G.S. § 28-9 on which the Governor expressly relied to issue his executive orders does not empower him to issue the executive orders in issue in this case.

32. To the extent that C.G.S. § 28-9(b)(1) purports to authorize the Governor to modify and suspend statutes, it violates the Connecticut constitution's separation of powers and is unconstitutional.

33. As the Plaintiffs face the loss of their business due to the Governor's executive orders which he lacks the authority to issue under the Connecticut constitution, the Plaintiffs have no adequate remedy at law.

34. The balancing of the equities in the situation described herein favors the granting of injunctive relief to the Plaintiffs to prevent the Governor from causing irreparable injury to the Plaintiffs.

35. The Plaintiffs are likely to prevail on the merits given the demonstrated lack of authority under the state constitution for the Governor to issue the executive orders which have pushed the Plaintiff's business to the brink of extinction.

36. Weighing the irreparable business consequences faced by the Plaintiffs and the unconstitutionality of the Governor's executive orders, against the Governor's interest in ruling unlawfully by fiat instead of allowing the legislature to perform its constitutional duty to legislate, the balance of equities tips decidedly in favor of the Plaintiffs.

Accordingly, the Governor ought to be temporarily and permanently enjoined from enforcing Executive Order Nos. 7D, 7G, 7N, 7T, 7X, 7MM and 7ZZ.

SECOND COUNT (DECLARATORY JUDGMENT)

1 - 36. Paragraphs 1 - 36 of the First Count are hereby made paragraphs 1 - 36 of the Second Count.

37. There is uncertainty as to the rights or other jural relations of the Plaintiffs and the Governor with respect to the power of the Governor to issue the executive orders at issue in this case as they affect the Plaintiffs, and there is a bona fide and substantial question or issue in dispute or substantial uncertainty of legal relations which require settlement between the parties.

WHEREFORE, the Plaintiff claims:

1. a temporary and permanent injunction prohibiting and restraining the Governor from enforcing Executive Order Nos. 7D, 7G, 7N, 7T, 7X, 7MM and 7ZZ and any similar executive orders he may issue during the pendency of this civil action;
2. a declaratory judgment declaring unconstitutional under the Connecticut constitution Executive Order Nos. 7D, 7G, 7N, 7T, 7X, 7MM and 7ZZ and any similar executive orders he may issue during the pendency of this civil action;
3. the costs of this action;
4. such other and further relief to which the Plaintiffs may be entitled at law or in equity.

The Plaintiffs, KRISTINE CASEY, d/b/a
CASEY'S IRISH PUB, and BLACK
SHEEP ENTERPRISE, LLC

By: /s/ 305638
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Juris Number 305638
60 Lyon Terrace
Bridgeport, Connecticut 06604
(203) 330-1900
Their Attorney


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OATH

STATE OF CONNECTICUT)
) ss.: Bridgeport June 30, 2020
COUNTY OF FAIRFIELD)

Kristine Casey, having been duly sworn, deposes and says:

1. I am a Plaintiff in the above-captioned action. I am over the age of 18 years and believe in the obligation of an oath.
2. I have read the above Amended Verified Complaint and to the best of my knowledge, belief and recollection, the factual allegations contained therein are true and accurate.



Kristine Casey

Personally appeared Kristine Case, a plaintiff in the above-captioned action, and made oath to the truth of the matters contained the foregoing Amended Complaint before me.



Jonathan U. Klein
Commissioner of the Superior Court

CERTIFICATION

I certify that a copy of the above was or will immediately be mailed or delivered electronically on June 30, 2020 to all counsel of record and that written consent for electronic delivery was received from all counsel of record who were or will immediately be electronically served, at:

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/s/ 305638
Jonathan J. Klein



EXHIBIT A



EXHIBIT B



EXHIBIT C

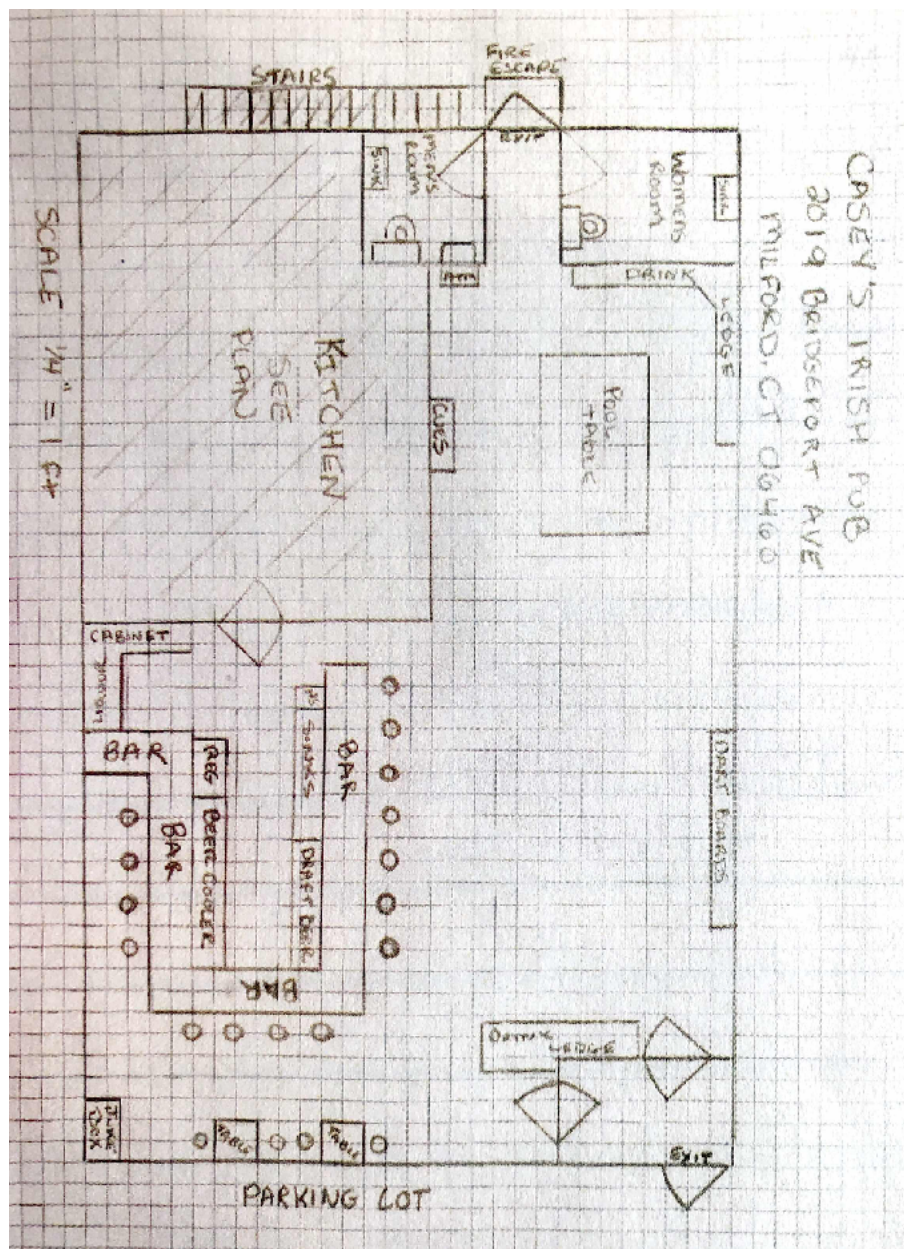


EXHIBIT D